A. *The Proposed Decree Is Consistent with the Supreme Court's Judgment*

As has been noted above, the Supreme Court did not order divestiture or any other specific mode of relief in this case. Thus, it must be assumed that in remanding the case for "further proceedings in conformity" with its opinion, the Court was following its usual practice of leaving the fashioning of relief to the District Court. Time and time again the Supreme Court has emphasized the broad discretion vested in district courts to frame antitrust remedies. In *United States* v. *National Lead Co.*, 332 U.S. 319, 334 (1947), the Court said:

> "In our opinion, the provisions of this decree, to a large extent, are matters lying within the discretion of the District Court as a court of equity whose duty it was to make the remedy as effective as possible."

In *United States* v. *Crescent Amusement Co.*, 323 U.S. 173, 185 (1944), the Court said:

> "We recognize however that there is a wide range of discretion in the District Court to mould the decree to the exigencies of the particular case; and where the findings of violations are sustained, we will not direct a recasting of the decree except on showing of abuse of discretion."

Again, in *International Salt Co.* v. *United States*, 332 U.S. 392, 400 (1947), the Court stated:

> "The framing of decrees should take place in the District rather than in Appellate Courts. They are invested with large discretion to model their judgments to fit the exigencies of the particular case."

This principle was applied again in *United States* v. *E. I. duPont de Nemours & Co.*, 353 U.S. 586, 607-08 (1957). Indeed, on the remand in the *duPont* case, which was an antitrust case arising under the Clayton Act in which the type of relief to be afforded was in dispute, the District Court initiated the submission of a proposed plan of re-

lief, and upon receipt thereof held four weeks of hearings on the proposal. *United States* v. *E. I. duPont de Nemours & Co.*, 336 U.S. 316, 320 (1961)

It is thus clear that this Court not only has jurisdiction to consider and enter a Decree of the sort agreed to by the parties, but that it is the usual and approved procedure for a district court, on remand from the Supreme Court in an antitrust case of this sort, to entertain such a proposal and conduct further proceedings thereon. The absence of any specific directions to this Court in the Supreme Court's opinion and judgment indicates that the Supreme Court intended the usual procedure to be followed in this case.

It should be emphasized that the proposed Decree settled a number of important questions that might otherwise have had to be litigated. It established that divestiture would occur, even though divestiture was not directed by the Supreme Court. It established a time schedule for the accomplishment of divestiture, and finally, it imposed limitations intended to ensure the re-created banks would remain as true competitors. If the substance of these provisions were to be acceptable to this Court, substantial savings of the time and energies of this Court and the parties would have been realized by the avoidance of further litigation.

B. *This Court has Power to Retain Supervisory Jurisdiction Over the Divestiture*

The proposed Interlocutory Decree contemplated that this Court might or could exercise some supervisory jurisdiction over various phases of the divestiture, and it is respectfully submitted that supervision over antitrust decrees is not only well within the powers of an equity court but is the usual and accepted practice in the effectuation of such decrees, whether the decrees were arrived at through agreement of the parties or through litigation.

Indeed, in the *International Salt* case, *supra,* the Supreme Court expressly approved this practice and refused to strike such supervisory provisions from the decree (332 U.S. at 401).

As the Court said in *United States* v. *Brown Shoe Co.,* 370 U.S. 294, 308-09 (1962):

> "However, when we reach the merits of, and affirm, the judgment below, the sole remaining task for the District Court will be its acceptance of a plan for full divestiture, *and the supervision of the plan so accepted.*
>
> "A second consideration supporting our view is the character of the decree still to be entered in this suit. It will be an order of full divestiture. *Such an order requires careful and often extended, negotiation and formulation.*" (Emphasis supplied)

The following is a partial list of other cases in which antitrust decrees containing provisions for continuing supervision by the District Court have been approved:

United States v. American Tobacco Co., 221 U.S. 106 (1910)
United States v. Reading Company, 253 U.S. 26 (1920)
United States v. Swift & Company, 276 U.S. 311 (1928)
United States v. Aluminum Company of America, 148 F.(2d) 416 (CA 2, 1945)
United States v. Paramount Pictures, Inc., 334 U.S. 131 (1948)
United Shoe Machinery Corp., (110 F. Supp. 295 (D. Mass., 1953), *affirmed* 347 U.S. 521 (1954)
United States v. Maryland & Virginia Milk Pro. Ass'n, 167 F. Supp. 799, 809 (D.D.C., 1958).

IV. The Defendant Has Fully Complied with the Order of March 6, 1961

The intent of the order of March 6, 1961, was to facilitate the divestiture of the consolidated bank in the event the Court should ultimately find that the consolidation violated the Sherman Act. An analysis of the terms of the order

(set out at pages 5 and 6 herein) shows how this purpose was to be carried out. Subsections (a) through (e) of Paragraph 3 require that the bank shall keep and maintain records so as to identify the respective stockholders, trust accounts, equipment and securities, and the notes and obligations of the two banks *as they existed at the time of consolidation.*

Subsection (g) requires records to be kept so that accounts, notes, loans and other transactions of new customers who had not been customers of either of the two banks could be readily identified.

Subsection (f) directs that the present Trust Departments of the consolidating banks, as at February 28, 1961, be maintained at their present locations and with substantially the same personnel.

We respectfully point out to the Court that all of the aforesaid subsections except Subsection (f) relate solely to the keeping and maintenance of records so as to identify the assets, liabilities, property and personnel of each bank as they existed at the time of the consolidation and to identify new customers who were not customers of either bank at the time of consolidation.

The only part of Paragraph 3 which relates to the operation of any department of the bank as distinguished from the maintenance of records is Subsection (f), and as pointed out it relates to the maintenance of the respective Trust Departments in their present locations.

We respectfully point out to the Court that Paragraph 3 must be read and considered in connection with the remainder of the order, and particularly Paragraphs 1 and 2, for it is clear that in entering the order Judge Ford recognized that consolidation of the two banks had been fully consummated and that the new bank, First Security, was authorized under the National Banking laws to carry on a banking business in Lexington, Kentucky. It is also

clear that the Court recognized that the business of the new bank must be conducted in accordance with the rules and regulations of the Comptroller of the Currency, Federal Reserve Board, and the F.D.I.C., and in accordance with sound banking practices.

Defendant has fully complied with each subsection of Paragraph 3 as follows:

(i) *Stock Ledgers and Records*

This portion of the order, Subsection (a), has been scrupulously followed. Stock ledgers showing the ownership of all stock in each of the banks at the time of the merger have been kept and maintained. Shortly after the merger, shareholders in First National and Security were notified to surrender their stock in the old banks for First Security stock. All stock transactions since the merger have been fully and meticulously recorded in the stock ledger, showing the names of the transferor and the transferee, the date and number of shares transferred in each transaction, and the source from which any stock issued pursuant to a transfer was derived. These records show in detail which shares of stock in the consolidated bank have been or were issued in exchange for stock in each of the consolidating banks. Every certificate of stock, whether in old First National, in old Security, or in First Security since the merger, which has been surrendered, exchanged, cancelled and reissued since the merger has been carefully preserved. Records are, of course, available to show the names and addresses of all present owners of all of the outstanding stock of First Security.

(ii) *Trust Records and Trust Departments*

The two directives, in Subsections (b) and (f) of the order, which concern the trust accounts and trust departments, have been faithfully fulfilled. On February 28, 1961, and for many years prior thereto, both First National

and Security operated fully staffed trust departments at their main offices. Since February 28, 1961, these two trust departments have continued to be separately operated, at their old locations and with substantially the same personnel. Some employees have resigned and been replaced in each department since the merger, but there has been no intermingling, shifting or transfer of personnel from one department to the other, even on a temporary basis.

With the exception, of course, of closed accounts, each trust department has continued to service and administer the trust accounts held by it on February 28, 1961, and each has separately handled the accounts acquired by it since that date. Complete records have been kept and maintained showing which of the former banks was named by the settlor or testator as the fiduciary, and the trust department of the bank so named has handled the account, and continues so to do. As to qualifications prior to March 1, 1961, detailed records have been kept and maintained showing which of the consolidating banks originally qualified as fiduciary; and as to qualifications since said date, the records show which bank was named and which trust department is carrying out the duties of the fiduciary.

In short, each trust department has continued to operate since the merger as a separate, distinct, fully staffed trust department as they were before the merger. The records of the two trust departments are fully adequate to show:

1) The trust accounts held by Security on February 28, 1961;

2) The trust accounts in which old Security was named by the settlor or testator as fiduciary;

3) The trust accounts acquired by the trust department of old Security since the merger;

4) The trust accounts held by First National on February 28, 1961;

5) The trust accounts in which old First National was named by the settlor or testator as fiduciary;

6) The trust accounts acquired by the trust department of old First National since the merger.

No trust business has ever been handled at any of the branches, either before or since the merger.

(iii) *Demand Deposit Accounts*

Subsection (c) of the order covers all accounts, both demand (checking) and savings. But the difference in the accounts required different treatment by the bank and separate discussion in this response.

As to all the accounts, both checking and savings, records have been kept and maintained adequate to identify which of the accounts in the consolidated bank were maintained in each of the consolidating banks as of the close of business February 28, 1961. But the bank has gone further. It has kept and maintained records showing which of the new accounts, opened since February 28, 1961, were opened at the main office of old First National or any of its branches, and which were opened at the main office of old Security or at its branch.

Every checking account in First Security has been assigned a seven digit identification number. The fourth digit of the seven digit number assigned to all First National checking accounts is an even number, 2, 4, 6, 8 or 0. On all Security accounts, the fourth digit is an odd number, 1, 3, 5, 7 or 9. In this way, all of the accounts can be readily identified as to bank of origin.

There is a further check on the accuracy of identifying the accounts by identification number. Signature cards are, of course, required for each account, and those used for Security accounts, whether opened before or since the merger, differ materially in size, color, content and/or format from those used for the corresponding type of First National accounts.

Records have been kept clearly adequate to enable identification to be made of:

1) All accounts held by Security on February 28, 1961;

2) All accounts opened since said date in each former Security office;

3) All accounts held by First National on February 28, 1961;

4) All accounts opened since said date in each former First National office.

The difficulty on divestiture in this field is not that of identifying the accounts. It is simply that neither the bank nor the Court can control the freedom of a depositor to move the account when and where he pleases. An account can be allocated to a re-established or re-created First National or Security Trust; but no one can compel the depositor to leave it there. This is an extremely delicate and sensitive area. Utmost caution must be exercised if public confidence and the stability and soundness of the two banks is to be preserved on divestiture.

In record keeping and in account identification, the bank has gone much further than the order required. There is no problem of identification and physical separation of all accounts, whenever acquired.

(iv) *Savings Accounts*

All savings accounts held by Security Trust on February 28, 1961 (and all such accounts opened since that date at the former main office or branch of Security Trust) have been kept separate and apart from those held by First National on February 28, 1961, or opened since said date at its former main office or any of its branches. Adequate records have been kept to identify all such accounts and show which were maintained in each of the consolidating banks on February 28, 1961; and which have been opened at the location of each of the former banks since said date.

(v) *Equipment, Materials and Real or Personal Property*

This direction has been meticulously fulfilled. Records adequate to identify all equipment, materials and real or personal property of each of the consolidating banks as of February 28, 1961, have been kept and maintained. The real property owned by each bank at the time of merger is shown by the title records; and there has been no real estate acquired or sold by the bank in its individual capacity since the merger.

All equipment, materials and personal property owned by each of the banks (with the exception of worn out items and consumable supplies) has been kept at its former location and thus readily identified, with minor exceptions, of which full records have been kept.

In addition, records have been kept and maintained showing all equipment purchased since the merger, whether to replace worn out equipment or to add to existing equipment. All such new equipment can be readily identified.

(vi) *Employees and Officers*

No mention is made of officers in the order, but they will be considered with employees. The order required only that records be kept to identify all employees of each of the consolidating banks as of February 28, 1961. This has been done. Even since the merger, separate payroll records for the two sets of employees have been kept.

Since the order of March 6, 1961, there has been no shifting of officers from one office to another, and the records readily identify the bank each served on February 28, 1961.

(vii) *Investments and Securities*

The order directed that records be kept adequate to identify the investments and securities of each of the consolidating banks or their customers as of the close of

business on February 28, 1961. This has been done and such records have been carefully preserved.

(viii) *Notes, Loans and Other Obligations and Transactions*

Subsection (e) of the order required records to be kept adequate to identify all notes and other obligations of each of the consolidating banks as of the close of business on February 28, 1961. Such records have been carefully kept and maintained. Every note or loan held by each of the former banks as of February 28, 1961, can be identified from such records.

Subsection (g) related to transactions with persons who were not customers of either bank prior to March 1, 1961. Such records have been kept and maintained. While the order did not require that business subsequent to March 1, 1961, be segregated between the former banks, this has been done. Every loan made since the merger can be identified as to the office making the loan. Every loan or note held by old Security at merger date was retained there for servicing and collection. Every loan made in old Security's offices since the merger has been kept there for handling. There has been no commingling of any loans or notes or lending departments.

The records kept and maintained are more than adequate to identify all notes, accounts, loans and other transactions with customers, both before and since March 1, 1961; and fully comply with the order of March 6, 1961 in every detail.

The affidavit of LeRoy Miles in support of this Response is filed herewith and is made part hereof.

(ix) *Summary*

From the foregoing, we respectfully submit that there has been no violation of either the spirit or letter of the order, and that the bank has kept and maintained more detailed records than were specifically required.

At the oral hearing on February 16, 1965, the Court inquired concerning the opening of a new branch. This branch was opened in Gardenside and was made in response to the request of numerous customers of the bank in the area. At substantially the same time, another Lexington bank, Second National, opened a branch in the same shopping district. The opening of the branch by First Security was approved by the Comptroller of the Currency after formal application and investigation, and was made with the full knowledge of, and without objection by, the Department of Justice. This branch was in no sense a "new bank." It simply furnished a more convenient banking location for many of the bank's customers.

In this connection, it should be noted that nowhere in the record, either in the order of March 6, 1961, or elsewhere, is there any prohibition whatsoever against the opening of a new branch. Such opening is regulated by the National Banking Laws and the Rules and Regulations of the regulatory agencies thereunder. All of these the bank has fully complied with in every respect.[4]

Conclusion

The defendant, its executive officers and directors, have the highest respect for the Court and for its orders and commands and for the Opinion and Mandate of the Supreme Court of the United States as the supreme law of the land. Within two weeks after the Supreme Court reversed the judgment of this Court, and even before the

[4] The conditions upon which a national banking association may establish a branch are set out in great detail in 12 U.S.C. 36, and the procedure therefor is contained in Sec. 4.5 of the Regulations of the Comptroller of the Currency. Under 12 U.S.C. 36, branches of national banks are authorized only if expressly "authorized to State banks by the statute law of the state in question." State limitations on branches are, therefore, in effect incorporated into the Federal law by reference. The Kentucky law appears in KRS 287.180. Strict limitations on the opening of branches are prescribed. In the opening of the Gardenside branch, all such statutory and regulatory requirements were meticulously observed.

Mandate was filed, defendant began negotiations with the Department of Justice in an effort to work out, if possible, an agreement without further litigation to carry out the Mandate of the Supreme Court. Both parties recognized that this was a landmark case, for it was the first time divestiture of a National Bank into two separate banks had ever been attempted.[5]

These negotiations culminated in the approval by both parties of the Stipulation and Interlocutory Decree which was presented to the Court on February 16, 1965.

During the entire period of four years of these proceedings the defendant, its executive officers and directors, have endeavored to carry on the banking business of the two former banks in the name of First Security, the only legally recognized banking association under the National Banking Laws, and at the same time, as we believe, we have demonstrated to the Court in this response that the defendant, its executive officers and directors, have fully complied with both the letter and the spirit of the order of March 6, 1961.

For the reasons stated, we most respectfully submit that the Court should not adjudge the defendant, its executive

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[5] Statement of Larry Williams, Chief of the Trial Section, Antitrust Division, Department of Justice, in open court at the hearing February 16, 1965, page 2, Transcript of Hearing:

"Pursuant to the Court's order originally of July, and more recently of January, the parties have been engaged in extensive negotiations and consultations in an attempt to arrive at an agreed upon order that could be submitted to the Court for its approval and consideration.

"I might say that we have had discussions with the top staff people of the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Comptroller of the Currency's office, and other experts in the banking field. We felt that this was important since this would be *the first time two banks will have been separated by order of court.*

"After extended discussions we have prepared to submit to the Court this morning a stipulation, attached to which is a proposed interlocutory decree, which we are prepared to recommend that the Court adopt . . ." (Emphasis Supplied)

officers and directors, guilty of contempt or appoint a special master.

Respectfully submitted,

STOLL, KEENON & PARK
310 First National Bank Building
Lexington, Kentucky

By _____

_____

ARNOLD, FORTAS & PORTER
1229 Nineteenth Street, N. W.
Washington, D. C.

_____

_____

HARBISON, KESSINGER, LISLE & BUSH
Security Trust Company Building
Lexington, Kentucky,

By _____

_____

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON

No. 1424

UNITED STATES OF AMERICA, *Plaintiff*

v.

FIRST NATIONAL BANK AND TRUST COMPANY OF LEXINGTON, SECURITY TRUST COMPANY, and FIRST SECURITY NATIONAL BANK AND TRUST COMPANY OF LEXINGTON, *Defendants*

Affidavit of LeRoy Miles in Support of Response to Order to Show Cause

The affiant, LeRoy Miles, after being duly sworn, states that the facts hereinafter set forth are true to the best of his knowledge and belief:

1. I am the President of First Security National Bank and Trust Company of Lexington, Lexington, Kentucky ("First Security"). I have occupied this position continuously since First Security was created on March 1, 1961, as a result of the consolidation of First National Bank and Trust Company of Lexington, Lexington, Kentucky ("First National"), and Security Trust Company ("Security").

2. The following is a statement of the records kept and actions taken in each field or phase of banking by First Security to comply with the order of this Court on March 6, 1961.

A) *Stock Ledgers and Records*

3. A minimal number of persons owning shares in each of the old banks have never surrendered their stock certificates to First Security since the merger and because

of this no stock in First Security has ever been delivered to them. Records of the bank have been kept to show the name and address and the number of shares owned by all shareholders of each of the two old banks as of February 28, 1961. Every share certificate in each of the two old banks that has been surrendered and cancelled in exchange for stock in First Security has been carefully preserved. Further, every certificate for stock in First Security that has been surrendered, cancelled and re-issued since the merger has also been kept. Records are also available to show the transferror and transferee and the date of the transfer of each share of stock in First Security that has been transferred since the merger. Finally, records are available to show the present owners of all of the 200,000 outstanding shares of stock of First Security as of this date.

B) *Trust Departments and Trust Records*

4. Before the merger, First National operated its own trust department on the third floor of its main office and Security operated its own trust department in its main office. Each of these trust departments has been operated continuously since the merger in the same location with substantially the same personnel. There has been no shifting or transferring of personnel from one of these departments to the other even on a temporary basis. Some of the personnel in each of these departments have resigned since the merger and replacements have been employed, but each trust department has operated as separately from the other as if no merger had occurred. Each department has continued to administer all of the accounts held by it on February 28, 1961, and all accounts acquired by it since that date. The office that the customer went to for his services is the office that has performed the service. For instance, the trust department at the old Security office has handled all estates and trusts if old Security Trust

Company was designated to handle them. Where First Security was designated, the old Security office has handled the account if the customer's contact was with the old Security office or if the instrument so designated. The converse has been true of the accounts handled by the trust department at old First National since the merger.

5. The records of each trust department are such that the clear and positive identification can be easly made as to which of the pre-existing banks was named to handle the account by the settlor or the testator in all accounts acquired since the merger because that particular trust department now has the account. The same is true of all accounts which were acquired prior to March 1, 1961. All such accounts that are still active are still being held in and administered by the trust department which originally acquired them, unless the settlor or someone outside the bank with power to do so has moved it elsewhere.

C) *Demand Deposit Accounts*

6. For several months following the merger, the bank undertook to operate separate proof and transit departments and separate bookkeeping and posting departments.[1] For years, local banks have operated a local clearing house which has as one of its primary purposes the collection and payment of checks between local banks. For example, if a check drawn on local bank "A" is deposited in local bank "B", the latter bank uses clearing house procedures to collect the check from bank "A". Under one of the rules of the clearing house which has been in effect for

[1] The function of the proof and transit department is to sort and forward checks, either to other banks for collection or to the bookkeeping department for payment and posting. The bookkeeping and posting department takes the checks and makes appropriate entries, giving credit for all deposits and charging accounts with checks drawn on them.

some time, if bank "A" does not return the check to bank "B" within a short specified period of time after receipt of the check, bank "A" has to pay the check to bank "B" whether it is good or bad.

7. After the merger, the problem of trying to maintain separate bookkeeping and posting departments for demand deposits became so increasingly difficult, that all such records were combined in one department. More and more often, checks were sent to one office for payment and returned marked "No account," when the customer had an account in the other office. Without a central bookkeeping and posting department, the time deadline under local clearing house rules for the return of bad checks could not be met by running such checks through both offices and losses were suffered by the bank on bad checks. Several customers had an account in each office in the same name and checks were being sent to an office and charged against the account which was not intended by the customer. Justifiable customer complaints became so numerous that some action became necessary in accordance with sound banking practice.

8. The first action taken in an effort to solve the above problems was to combine the proof and transit departments. This involved the movement of the two employees in this department of Security into the old First National building. The problems continued and in accordance with sound banking practices a short while later the records of all demand deposit accounts of Security were moved to and consolidated with those of First National, but records have been kept to enable all such accounts to be properly identified and such accounts can now be identified from available records of defendant.

9. In either 1958 or 1959, First National assigned a number of seven digits to each of its demand deposit accounts and this number was placed on the ledger card of

each demand deposit account. Thereafter, and following through after the merger and to this day, every new demand deposit account opened in First National and all of the branches that were First National branches prior to the merger has been assigned a number of seven digits. This assignment of identification numbers to accounts not only facilitates the identification of accounts, but it also helped speed up the process of sorting, forwarding and posting checks. Prior to the merger none of the accounts at Security had ever been assigned an identification number, as Security had never adopted this procedure. In February, 1963, seven digit identification numbers were assigned to all accounts that Security had at the time of the merger, plus all accounts that had been opened to that time, in either the former main office or former branch of Security. The first distinguishing feature between Security accounts and First National accounts *is that the fourth digit of the seven digit identification number assigned to all checking accounts of old Security is always an odd numbered digit. It is either 1, 3, 5, 7 or 9. This applies to all accounts now held by First Security which were held by Security at the time of the merger plus all of those that have been opened to date since the merger in an office that was formerly a Security Trust office.* In addition, all Security accounts have the letter "S" on the addressograph plate. Conversely, the fourth digit of the seven digit identification number assigned to all checking accounts of old First National is always an even numbered digit. It is either 2, 4, 6, 8 or 0. This applies to all accounts now held by First Security which were held by First National at the time of the merger plus all of those that have been opened to date since the merger in an office that was formerly a First National office.

10. There is a further check against the accuracy of the identification number. Two sets of signature cards are attached and made a part hereof marked "Exhibit A." The set of cards shown for First National have been used

exclusively for all accounts opened in offices that were formerly First National offices since the merger. The set of cards shown for Security have been used exclusively for all accounts opened in offices that were formerly Security offices since the merger. The signature cards used for accounts of First National are clearly distinctive and identifiable from those used for Security accounts in their color, size, format and language. The source or origin of each demand deposit account can also be easily determined by the differences in these cards, which are:

	First National Card			Security Card		
Type of Account	Color	Size	Format	Color	Size	Format
Joint	blue	3" x 5"	Different	orange	3" x 5"	Different
Partnership	pink	3" x 5"	"	blue	3" x 5"	"
Corporation	yellow	3" x 5"	"	yellow	5" x 6"	"
Individual	white	3" x 5"	"	orange	3" x 5"	"

Old Security cards have never been used in any old First National office and old First National Cards have never been used in any old Security office. The signature cards provide a second check against the accuracy of identification by reference to the fourth digit of the identification number.

11. On divestiture, all accounts that were held by the old Security on merger plus all that have been opened in a former Security office since merger will be identified first by the fourth digit being an odd number and then by checking this against the signature card. These accounts would normally be allocated to the re-created Security on divestiture. While a bit of time will be required to examine approximately 30,000 demand deposit account records, there is no problem whatever in identifying:

a) All demand deposit accounts held by Security as of February 28, 1961;

b) All demand deposit accounts opened since the merger in either office that was formerly a Security office;

c) All demand deposit accounts held by First National as of February 28, 1961;

d) All demand deposit accounts opened since the merger in any office that was formerly a First National office.

D) *Savings Deposit Accounts*

12. The problems that were encountered in the demand deposit accounts did not occur in the savings deposit accounts. This was true because of basic differences between the two types of deposits. A savings deposit customer is required to appear with his passbook to make a withdrawal from a savings account. He cannot pay bills and accounts to third persons by writing checks on his savings deposit. Therefore, in this field there was no problem of clearing checks on time or of where to send checks for posting and payment. Consequently, the savings deposit records of old Security and old First National have been maintained entirely separate from each other. All new savings accounts opened since the merger in either of the offices that was formerly a Security office have been kept with the savings deposits of Security, and all new savings accounts opened since the merger in either of the offices that was formerly a First National office have been kept with the savings deposits of First National. There has been no consolidation or commingling of the records of savings accounts at all. Consequently, there is no problem whatever of identifying from the records:

a) All savings accounts held by Security as of February 28, 1961;

b) All savings accounts opened from March 1, 1961, to date in the two offices that were formerly Security offices;

c) All savings accounts held by First National as of February 28, 1961;

d) All savings accounts opened from March 1, 1961, to date in the offices that were formerly First National offices.

13. On divestiture the accounts that are now separated and identifiable with old Security would normally be allocated to the re-created Security.

E) *All Equipment, Materials and Personal Property*

14. There has been no shifting or relocation of any equipment, materials and personal property from any former First National office to any former Security office since the merger. A complete list of all equipment, materials and personal property moved from the main office of old Security to the main office of old First National since the merger is attached and made a part hereof marked "Exhibit B" for purposes of identification. This equipment is marked for ease of identity although it could easily be identified without marking. All other equipment, materials and personal property owned by each of the two banks as of February 28, 1961, can be identified as to ownership by its present location because none of the remainder has been moved. Equipment, materials or personal property that has worn out or been used up in the meantime has been replaced as necessary, but records of such purchases have been maintained and equitable division can and will be made on divestiture.

F) *Real Property*

15. On February 28, 1961, Security had its main office at West Short and North Mill Streets (with certain adjacent real estate) and one branch at the intersection of North Broadway and Loudon. First National had its main office at West Main and Upper Streets and three branches located as follows:

a) 727 Euclid Avenue
b) 265 Eastland
c) 416 Southland.

The two main offices and the Euclid Avenue branch are owned by the bank. The other branch locations are leased.

Neither bank owned any other real estate in its individual capacity as of February 28, 1961, nor has so acquired any since. Since the merger and only a short while ago, First Security has opened an additional branch at 1757 Alexandria Drive at a leased location. There is no problem whatever of identifying the real property owned by the two banks as of February 28, 1961, or as of this date by the merged bank.

G) *Employees and Officers*

16. Since the merger there has been no shifting of officers between old Security offices an dold First National offices and there is no problem whatever in identifying the bank that each officer worked for on February 28, 1961. Further, there is no difficulty in identifying from the records all employees that each of the two banks had on February 28, 1961. Throughout the period since the merger separate payroll records of the two sets of employees have been kept. When the proof and transit department of old Security was moved over and consolidated with old First National's after the merger, the only two employees that old Security had in its department were moved over. Their names were Helen Tate and Eleanor Gray. Both have since left this employment and Mary May and Edna McMillan have replaced them and are on the separate payroll of old Security. When the bookkeeping and posting department of old Security was later moved over and consolidated with old First National's six employees and one supervisor were also moved over and all of them have since terminated their employment. Two of the bookkeeping machine operators and the supervisor have been replaced and they are all carried on the separate payroll of old Security employees. After the merger, a single switchboard was acquired to serve all offices of the bank and one employee from old Security was moved over when this was done. She has since terminated her employment. All employees of each of the two banks as of February 28, 1961, can easily be identified.

H) *Investments and Securities*

17. Records were made and are available to show all investments and securities belonging to the two banks as of February 28, 1961. Since the merger some of the investments that were held by each bank at the time of the merger have matured and have been redeemed and the funds so received have been reinvested from time to time. The maximum interest rate that banks can legally pay on savings deposits has been increased since the merger. In order to meet the competition of other local banks, First Security raised its interest rates at that time. In an effort to get increased earnings to pay the higher interest rate more investments were made in municipal and state bonds, consistent with Federal regulation, the income from which was tax free. Each of the banks held some U. S. Government Bonds at the time of the merger. These are generally short term bonds that can be sold readily and reduced to cash when and if the need arises. Many of these bonds held by the banks at merger have since matured and reinvestments in the same general type have been made. Constant attention must be given to these investments if the maximum earnings consistent with their safety are to be obtained. On divestiture, the investments and securities will be fairly and equitably allocated between the two recreated banks so as to do the best job possible of starting out with two sound, well balanced banks.

I) *Loans, Notes and Other Obligations*

18. a) *Charge Accounts*—Prior to the merger, First National created a charge account procedure which results in a type of a loan if the customer desires to pay the balance on time. Credit cards were issued to individuals on application and many stores and businesses agreed to charge accounts and purchases on the credit cards. First National would purchase these charge accounts from the merchant or business and send the buyer a statement of all charges made by him at the end of the month. The buyer

is given the option to pay the account in installments and if he elects to do so, a form or type of loan results and interest charges are made against the balance due. Security has never had any such service or department. The department at First National has continued to operate since the merger with substantially the same personnel and, of course, all obligations of this type in existence as of February 28, 1961, were owned by First National.

b) *Installment Loans*—These are loans that are generally made for the purchase of consumer goods. Prior to the merger, both Security and First National had their own separate installment loan departments with their own separate equipment and personnel. Since the merger, each of these separate departments has continued to operate as entirely separate departments as before as if no merger had occurred. There have been changes in the personnel of each since the merger, but replacements have been made in the personnel of each department as needed to keep each functioning as separate departments. There has been no consolidation or commingling of these loans at any time, and there has been no shifting or relocating of any equipment from one department to the other. On divestiture, each department at the two locations (Security and First National) should be able to continue operations with little or no interruption. All of these loans held in each bank as of February 28, 1961, are identifiable with no difficulty. After the merger, these loans remained at the same location for servicing and collection and new loans were made from each department daily thereafter. All loans made in each department thereafter have been kept in that department, so that as of today all loans of this type held at each location were made at that location to the customer. The records of the installment loan department in the old Security building show:

(1) The installment loans and notes held by that bank on February 28, 1961; plus

(2) All installment loans made in the two former offices of Security from February 28, 1961, to date.

The records of the installment loan department in the old First National building likewise show:

(1) The installment loans and notes held by that bank on February 28, 1961; plus

(2) All installment loans made in all former First National offices from February 28, 1961, to date.

c) *Commercial, Industrial, Real Estate and Other Loans, Including Secured and Unsecured*—Many different types of loans will be covered under this heading for the reason that all of them were made, kept and serviced in one department at each bank before the merger and the same two departments have continued to operate at the same locations as separate departments performing the same services in the same manner since the merger. Loans made in each of these departments both before and after the merger constitute the greater portion of the dollar amount of the total loans made by the two banks before the merger and by the merged bank afterwards. Loans covered under this heading may be classified as commerical and industrial both secured and unsecured, real estate mortgage loans on residences and farms, some chattel mortgage loans and miscellaneous unsecured loans. On February 28, 1961, Security had its lending department in its main office at West Short and North Mill Street staffed with its own personnel. All notes on all loans held on February 28, 1961, in that department of Security remained in that office for servicing and collection after the merger and all new loans of these types made in that department and in the former Security branch from February 28, 1961, to date have been kept there for servicing and collection. The same practice has been followed at the department in the old First National office. All notes on all loans held on February 28, 1961, in that department of First National remained in

that department for servicing and collection and all new loans of these types made in that department and in any former First National branches from February 28, 1961, to date have been kept there for servicing and collection. There has been no commingling or consolidation of any of these loans and no transfers of any personnel from one department to the other since the merger, even on a temporary basis. From the records in each department, there is no problem of identifying all of the loans of these types held by each of the two consolidating banks on February 28, 1961. The records kept at each of the locations will clearly reveal this. Further, there is no problem of identifying all loans made in each of the departments (including identifying the branch of each former bank at which a loan was made) from February 28, 1961, to date. In many instances loans outstanding as of February 28, 1961, at each bank have been paid and many loans made in each department since the merger have been paid. There has been no commingling or combining or consolidating of the records of each of these two departments at any time. Each department has been staffed with its own personnel that have been paid on the separate payroll of each. There is no problem of identifying all loans of these types with one department or the other of the merged bank, or with one or the other of the two pre-existing banks as of February 28, 1961.

NEGOTIATIONS WITH DEPARTMENT OF JUSTICE FOLLOWING THE DECISION OF THE SUPREME COURT

The following is a summary of the negotiations conducted between counsel and officials of defendant and representatives of the Department of Justice and banking supervisory agencies following the decision of the Supreme Court in this case.

19. On April 20, 1964, two weeks after the opinion of the Supreme Court was delivered, representatives of the bank and its counsel, upon the invitation of Mr. William H.

Orrick, Jr., Assistant Attorney General in charge of the Antitrust Division, met with representatives of the Department of Justice, including Mr. Orrick, in Washington. At this meeting, the Department of Justice made it clear that it would insist upon divestiture in some form as the only appropriate course. However, because they were not experienced in banking and did not have the necessary information, they expressed the belief that divestiture would be more orderly and successful if a plan were formulated by someone else with more experience and knowledge of banking. On May 5, 1965, a second meeting was held in Washington with representatives of the Department of Justice, at which time they requested that the bank and its counsel formulate and submit a proposed plan of divestiture. At the same time, in order to faciliate negotiations with the Department of Justice, First Security employed the law firm of Arnold, Fortas and Porter in Washington as additional counsel to represent it.

20. Thereafter, banking officials and its counsel had several meetings and prepared a general plan of divestiture and submitted it to the Department of Justice on August 7, 1964. On submission of the plan, the Department of Justice was informed that, while the plan was general in nature, the bank was willing to have the Department consider it as a basis for settlement of the case. We are informed that the Department of Justice thereafter consulted with officials of the Federal Reserve Board, the Federal Deposit Insurance Corporation and representatives of the Comptroller of the Currency. On September 29, 1964, counsel for the bank and a representative of the Department of Justice conferred with the Commissioner of Banking of Kentucky regarding the general plan.

21. More meetings and conferences were held, and shortly after Christmas of 1964, counsel for the bank received a letter from the Department of Justice dated December 24, 1964, indicating the basic principles on which it be-

lieved a Decree should be based, some of which were in accord with the draft plan and some of which were not in accord with it. Near the end of December, 1964, conferences were held with officials of the office of the Comptroller of the Currency in Washington during the course of which expressions and comments were made by officials of that office on the proposed plan. Additional information was requested by these officials and this was promptly compiled and forwarded to them. From time to time additional information was requested by the Department of Justice and each request was promptly fulfilled.

22. Following the order of this Court of January 11, 1965, negotiations were intensified and a lengthy meeting was held in Washington between officials and counsel for the bank and representatives of the Department of Justice in which substantial agreement was reached on the major points incorporated in the proposed decree submitted to this Court on February 16, 1965. When the proposed decree was finally agreed upon, it was submitted to and approved by the Directors of the bank. Revisions in the decree were thereafter submitted to and approved by the Directors.

23. Throughout the period since the opinion of the Supreme Court was rendered, negotiations have been continuous, bona fide and in good faith in an effort to reach a practicable and workable solution to the problem.

LeRoy Miles
LeRoy Miles

State of Kentucky }
County of Fayette }

Subscribed and sworn to before me by LeRoy Miles, on this the 2nd day of March, 1965.

My commission expires

Notary Public, Fayette County, Kentucky

APPENDIX N

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON

No. 1424

UNITED STATES OF AMERICA, *Plaintiff*

v.

FIRST NATIONAL BANK AND TRUST COMPANY OF LEXINGTON, SECURITY TRUST COMPANY, and FIRST SECURITY NATIONAL BANK AND TRUST COMPANY OF LEXINGTON, *Defendants*

* * *

Motion to Set Aside the Order of Contempt

[Filed March 1, 1965]

The defendant, First Security National Bank and Trus Company of Lexington, its executive officers and director move this Honorable Court to set aside its order entere herein on February 16, 1965, adjudging the defendant, it executive officers and directors, in contempt of court fo failure to comply with the Mandate of the Supreme Cou of the United States filed in this Court on May 4, 1964.

As grounds for this Motion defendant respectfully state that:

1) Neither defendant nor any officer or director of de fendant has failed to comply with any order, mandat judgment or opinion of the Supreme Court herein.

2) Neither defendant nor any officer or director of de fendant may be legally adjudged guilty of contempt fo failure on the part of defendant to comply with the Man date of the Supreme Court of the United States filed herei on May 4, 1964, because neither the said Mandate nor th Opinion of the Court defines, orders or directs the ap propriate relief to be granted in conformity with th Opinion nor orders or directs defendant, its executiv officers and directors, to do, or refrain from doing, an

act pursuant thereto, but on the contrary the Supreme Court in remanding the case to the District Court for further proceedings in conformity with its Opinion has followed its normal and customary practice to "assign to the District Court the responsibility initially to fashion the remedy. . . ." No such order or decree has been entered by this Court.

3) It is beyond the jurisdiction of this Court to adjudge the defendant, its executive officers and directors, in contempt of court for failure to comply with an order of another court.

As further grounds for support of this Motion, the defendant respectfully shows the Court that:

1) The Supreme Court's Opinion and Judgment of April 6, 1964, reversing the judgment of the District Court are not in and of themselves ipso facto "orders of divestiture" but contemplate that the District Court will conduct further proceedings for the purpose of fashioning a decree which will define the appropriate equitable relief consistent with the Supreme Court's Opinion to fit the exigencies of this case. While the Supreme Court held that the consolidation of the two banks violated the Sherman Act, in accordance with its normal practice it left open the question of the nature and character of the equitable relief to be granted. The ordering clause of the Court's Opinion simply stated: "Reversed," and the Court's formal Judgment merely reversed the judgment of the District Court and ordered "that this cause be, and the same is hereby remanded to the United States District Court for the Eastern District of Kentucky for further proceedings in conformity with the opinion of this Court." Neither the opinion nor the judgment of the Supreme Court mentions divestiture or attempted in any manner to discuss or define the appropriate relief to be granted. No order or decree of the District Court has been entered herein defining the appropriate equitable relief to be

granted in conformity with the Opinion of the Supreme Court.

2) An Interlocutory Decree providing for a Plan of Divestiture of First Security National Bank and Trust Company of Lexington was tendered for filing herein on February 16, 1965, in implementation of the Supreme Court's Mandate with a signed Stipulation in which both plaintiff and defendant recommended that the Court enter the proposed Decree as being appropriate under the Supreme Court's Mandate. The Court declined to enter the Decree but entered the order of contempt for failure to comply with the Supreme Court's Mandate. It is submitted that until such time as the Court enters said Decree, or a similar order or decree, defining the appropriate remedy pursuant to the Supreme Court's Mandate defendant cannot be adjudged guilty of contempt of such Mandate.

3) Upon the consolidation of Security Trust Company and First National Bank and Trust Company of Lexington into First Security National Bank and Trust Company of Lexington as a National Banking Association a new corporate entity was created and all rights, franchises and interests in property subject to existing liabilities of both consolidating banks were transferred to the consolidated National bank by the terms of the National Banking Laws (12 U.S.C.A. 215) and Section 287.173 KRS and thereupon First Naitonal Bank and Trust Company of Lexington and Security Trust Company ceased to exist as separate banks. Accordingly, the Plan of Divestiture set forth in the Interlocutory Decree provides for an orderly procedure for the organization and re-establishment of Security Trust Company as a State bank and trust company from the present assets and liabilities of First Security National Bank and Trust Company of Lexington so as to re-create a separate competitive and independent commercial bank which shall be the competitive equivalent

of the Security Trust Company at the time of its consolidation with former First National Bank and Trust Company of Lexington.

WHEREFORE, the defendant prays that the Court set aside as of February 16, 1965, its order entered herein on said date adjudging the defendant, its executive officers and directors, guilty of contempt and further adjudging that they pay a fine of $100.00 a day beginning February 16, 1965, and continuing until the defendants purge themselves of the contempt by a full compliance with the Mandate of the Supreme Court.

ARNOLD, FORTAS & PORTER
1229 Nineteenth Street, N. W.
Washington, D. C.

By _____

_____

STOLL, KEENON & PARK
310 First National Bank Bldg.
Lexington, Kentucky,

By _____

_____

HARBISON, KESSINGER, LISLE & BUSH
Security Trust Company Building
Lexington, Kentucky

By CLINTON M. HARBISON
RUFUS LISLE
Attorneys for Defendant, First Security National Bank and Trust Company of Lexington

APPENDIX O

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY

Civil No. Lex 1424

UNITED STATES OF AMERICA, *Plaintiff*

v.

FIRST SECURITY NATIONAL BANK AND TRUST COMPANY OF LEXINGTON, *Defendant.*

Motion for Entry of Order

[Filed March 1, 1965]

Plaintiff herein moves the Court after a hearing to enter the attached order for divestiture.

Respectfully submitted,

WILLIAM H. ORRICK, JR.
Assistant Attorney General
Antitrust Division

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY

Civil No. Lex 1424

UNITED STATES OF AMERICA, *Plaintiff*

v.

FIRST SECURITY NATIONAL BANK AND TRUST COMPANY OF LEXINGTON, *Defendant.*

Order

The Supreme Court of the United States, having held the consolidation of the Security Trust Company into the First National Bank and Trust Company of Lexington

which resulted in the formation of the defendant First Security National Bank and Trust Company of Lexington, to be in violation of Section 1 of the Sherman Act, and by its judgment filed herein on May 4, 1964 having reversed the judgment of this Court and having remanded this cause to this Court for further proceedings in conformity with the opinion of the Supreme Court, and this Court having concluded that divestiture relief should be ordered herein.

NOW, THEREFORE, it is hereby:

ORDERED, ADJUDGED AND DECREED as follows:

I

Defendant shall without delay take all necessary steps to recreate a separate, competitive and independent commerical bank which shall be the competitive equivalent of the former Security Trust Company of Lexington at the time of its consolidation with the former First National Bank and Trust Company of Lexington, including, but not limited to its name, its directors, its officers and personnel, its offices, furniture and equipment, its capital surplus and undivided profits, and loans, savings, checking and trust accounts, plus its proportionate share of any increments and improvements since that date. Subject to such limitations on the eligibility of stock to be voted as may be appropriate to insure the independence of operation of the banks, all of the capital stock of the banking association to be recreated by defendant shall be distributed to the shareholders of First Security.

II

Defendant shall take all reasonable steps to secure each consents of bank regulatory agencies as may be involved in the re-establishment of said bank, including a commitment for insurance of deposits by the Federal Deposit Insurance Corporation.

III

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Decree to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Decree, for the modification of any of the provisions hereof, for the enforcement of compliance herewith and for the punishment of violations hereof. This order shall supersede, as of February 16, 1965, the prior order of this Court concerning contempt of the mandate of the Supreme Court.

Dated: ——————, 1965

United States District Judge

APPENDIX P

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON

No. 1424

UNITED STATES OF AMERICA, *Plaintiff*

v.

FIRST NATIONAL BANK AND TRUST COMPANY OF LEXINGTON, SECURITY TRUST COMPANY, and FIRST SECURITY NATIONAL BANK AND TRUST COMPANY OF LEXINGTON, *Defendants*

Order

The response to the order of this court to show cause why a special master should not be appointed is sufficient. The motion of the plaintiff filed on March 1, 1965 asking that the appointment of a special master be withheld at this time is therefore sustained.

The response to the order to show cause why the defendant, First Security National Bank & Trust Company of Lexington, its officers and directors, should not be held in contempt for violating the order of this court of March 6, 1961 is sufficient and is sustained.

The motion of the plaintiff of March 1, 1965 to enter the order of divestiture attached to the motion is overruled.

The motion to set aside the order of contempt is overruled.

Mar. 18, 1965

MAC SWINFORD
Mac Swinford, *Judge*

APPENDIX Q

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON

No. 1424

UNITED STATES OF AMERICA, *Plaintiff*

v.

FIRST NATIONAL BANK AND TRUST COMPANY OF LEXINGTON, SECURITY TRUST COMPANY, and FIRST SECURITY NATIONAL BANK AND TRUST COMPANY OF LEXINGTON, *Defendants*

Order

The Supreme Court of the United States held the consolidation of the Security Trust Company into the First National Bank and Trust Company of Lexington, which resulted in the formation of the First Security National Bank and Trust Company of Lexington, to be in violation of Section 1 of the Sherman Act. Its judgment, filed May

4, 1964, reversed the judgment of this Court and remanded this cause for proceedings in conformity with its opinion.

It is ORDERED, ADJUDGED AND DECREED as follows:

I

Defendant, First Security National Bank and Trust Company of Lexington, shall without delay take all necessary steps to create a separate, competitive and independent commercial bank which shall be the equivalent of the former Security Trust Company at the time of its consolidation with the former First National Bank and Trust Company of Lexington, including, but not limited to its name, its directors, its officers and personnel, its offices, furniture and equipment, its capital surplus and individed profits, and loans, savings, checking and trust accounts, plus its proportionate share of any increments and improvements since that date. Subject to such limitations on the eligibility of stock to be voted as may be appropriate to insure the independence of operation of the banks, all of the capital stock of the banking association to be created by the defendant, First Security National Bank and Trust Company of Lexington, shall be issued in the name of a corporate trustee to be held by it until directed by order of this court to be distributed to the proper shareholders.

There shall be no interlocking directorates or identity of personnel on any level between the present banking institution and the new banking institution to be created.

II

The directors of First Security National Bank and Trust Company who were directors of First National Bank and Trust Company and those who were directors of Security Trust Company will constitute the directors of their former institutions until such time as stockholders elect directors. Directors who were elected since the merger for the first time will lose their directorships.

III

The First Security National Bank and Trust Company of Lexington shall without delay change its name to First National Bank and Trust Company of Lexington. It shall destroy all blank stationery, checks and records bearing the name First Security National Bank and Trust Company of Lexington. It shall cease conducting any advertising in the name of First Security National Bank and Trust Company of Lexington. It will remove from any real estate it occupies the name First Security National Bank and Trust Company of Lexington.

IV

The United States Department of Justice shall have authority to examine and inspect all the records of the defendant, First Security National Bank and Trust Company of Lexington, as presently named, or First National Bank and Trust Company of Lexington after the name is changed as herein directed, for the purpose of being advised that it is complying with the provisions of this order. The Department shall be kept fully advised by the bank as to the progress made in fulfilling the purpose of this order.

V

The purpose of this order is to establish competitive banking between the institutions involved as it existed prior to the unlawful merger on March 1, 1961. Any effort to circumvent that purpose on the part of any individual or corporate institution will be treated as a contempt of this court.

VI

Jurisdiction is retained for the purpose of enabling any of the parties to apply to this Court for such orders and directions as may be necessary for the construction or carrying out of this order, for the modification of any of

the provisions hereof, for the enforcement of compliance herewith and for the punishment of violations hereof.

Mar. 18, 1965

MAC SWINFORD
Mac Swinford, *Judge*

APPENDIX R

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON

No. 1424

UNITED STATES OF AMERICA, *Plaintiff*

v.

FIRST NATIONAL BANK AND TRUST COMPANY OF LEXINGTON, SECURITY TRUST COMPANY, and FIRST SECURITY NATIONAL BANK AND TRUST COMPANY OF LEXINGTON, *Defendants*

Order

Pursuant to order of March 4, 1965, came the Government by George I. Cline, United States Attorney and Larry L. Williams, Attorney Department of Justice and the defendants by their attorneys Gayle Mohney, Gladney Harville, Clinton M. Harbison, Rufus Lisle and Paul Porter. The Court heard counsel for the Government and the defendants on the pending motions and entered Orders in accordance with its rulings.

Counsel for the defendants filed a Motion for Stay of Order Entered February 16, 1965, Adjudging Defendant in Contempt of Court for Failure to Comply With the Mandate of the Supreme Court of the United States. The Court being advised overruled the motion for stay of order.

On motion of counsel for the defendant to fix bond on appeal by the defendants from the Court's Order of February 16, 1965, it was ORDERED that bond be fixed in the sum of $500.00 and that no surety is required.

March 18, 1965

MAC SWINFORD
Mac Swinford, *Judge*

APPENDIX S

SUPREME COURT OF THE UNITED STATES

No. ....., October Term, 1964

FIRST SECURITY NATIONAL BANK AND TRUST COMPANY OF LEXINGTON, *Appellant,*

vs.

UNITED STATES

Order

UPON CONSIDERATION of the application of counsel for the appellant, and of the memorandum of the Solicitor General in response thereto,

IT IS ORDERED that the order of the United States District Court for the Eastern District of Kentucky, of February 16, 1965, insofar as it imposes a fine of One Hundred ($100) Dollars a day upon the appellant be, and the same is hereby, stayed as of this day pending the filing, on or before May 17, 1965, of the record and statement as to jurisdiction under Rule 13 of the Rules of this Court. Should the record and statement as to jurisdiction be so filed, this stay is to continue pending the action of the Court on the

jurisdictional aspect of the case. In the event this Court notes probable jurisdiction or postpones consideration of the jurisdiction pending the hearing on the merits, then this stay is to remain in effect pending the issuance of the judgment of this Court. Should the appeal be dismissed, or the judgment affirmed or reversed summarily, this stay is to terminate immediately.

Appellant's liability for fines incurred prior to this date shall await the outcome of this litigation.

S/ POTTER STEWART
Associate Justice of the Supreme Court of the United States.

(SEAL)

Dated this 2nd
day of April, 1965.

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